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Sent: 6/7/2012 11:01:01 AM
To: Caroline Ahearn/DC/USEPA/US@EPA
CC: Tim Sullivan/DC/USEPA/US@EPA
Subject: Re: Fw: Notes from June 6th HEC Hearing:

Caroline -

I think that a transcript format is really not useful for Sr. managers. I would have Keith summarize the main criticisms of EPA by the members and witnesses, and provide a link to the YouTube video for people to watch if they want to see the actual testimony.

Rich

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**From:** Caroline Ahearn/DC/USEPA/US  
**To:** Richard Albores/DC/USEPA/US@EPA  
**Cc:** Tim Sullivan/DC/USEPA/US@EPA  
**Date:** 06/07/2012 10:48 AM  
**Subject:** Fw: Notes from June 6th HEC Hearing:

Rich,  
Keith B. watched the hearing yesterday but his computer is not the best at capturing these hearings. Can you please take a look at the summary below and let me know if you have any edits or comments? Thanks, Caroline

Below is a summary of the Questions and Answers from today's hearing that was prepared by Keith Bartlett of PLCD. Rep. Scalise (R-LA) stated that he would like records of communication between Dr. Armendariz and the Administration as to why he decided to not show up at the last minute. Rep. Rush responded that there is no basis for an inquiry between the White House and Dr. Armendariz.

Questions and Answers from June 6, 2012, House Energy and Commerce, Energy and Power Subcommittee, entitled "EPA Enforcement Priorities and Practices."

**Witnesses:** Dr. Bryan W. **Shaw**, Chairman of the Texas Commission on Environmental Quality (TCEQ); Barry T. **Smitherman**, Chairman, Texas Railroad Commission; Stephen B. **Etsitty**, Executive Director, Navajo Nation Environmental Protection Agency; Allen **Short**, General Manager, Modesto Irrigation District On behalf of the Modesto Irrigation District, M-S-R Public Power Agency, and the Southern California Public Power Authority; Robert J. **Sullivan**, Jr., Chairman, Oklahoma Independent Petroleum Association (OIPA); and Joel **Mintz**, Professor of Law at Nova Southeastern University.

Subcommittee Chair, Whitfield (R-KY):

o For those of you have worked with EPA, do you personally think there is a personal bias against Oil and Gas exploration:

- Smitherman: Yes

- Shaw: Yes,

- Sullivan (OIPA): Yes, I do think there is a bias, and I think that it comes from the top, President Obama. It is natural to follow.

- Etsitty: I believe there is a difference, but, would not characterize it as a bias. We have had successful consultation with EPA, but, under the CAA issues, it has been difficult.

- Short: I would say there is a preference towards Natural Gas compared to Coal and Oil.

- Mr. Barton (R-TX):

o To Shaw:

- Is Texas air quality improving?

- Yes

- When Region 6 decided to throw out the flex permitting program, was it because air quality was getting worse?

- No, because the playing field was not fair.

o To Smitherman:

- Your agency has regulatory authority over oil and gas?

- Yes.

- Under both federal and state law, it is your agency that would regulate Hydraulic Fracturing?

- Yes, the practice takes place under ground, and we would regulate that.

- Mr. Lipinsky, the citizen complainant in the Range Resources case, complained that he had natural gas in his well water, and he asked the Texas Railroad commission to investigate, is that correct?

- Yes.

- When EPA Region 6 was asked to issue an emergency order against Range Resources, did your predecessor ask that EPA delay?

- Yes, but, EPA issued the Order regardless, and Mr. Armendariz stated that houses could explode if EPA did not issue the emergency order.

- In a hearing, there was evidence presented that showed that the natural gas was not from hydraulic fracturing.

- Barton read a statement:

- The evidence...is conclusive.

- Green (D-TX):

- o We are all aware of how EPA got ahead of itself in Pavillion, Range Resources, Dimock and other places.
- o Do you have any other examples of where EPA got ahead of itself?
- Smitherman:
  - These are the most egregious cases.
- o Green:
  - Any others from State regulators?
  - No response
- o Green:
  - Have you noticed any enforcement trends on downstream production?
  - Shaw: I am not allowed to talk about enforcement actions in the state.
  - EPA included Texas in the Cross State Air Rule on sulfur dioxide. Did EPA work with TCEQ before the rule went final?
    - Shaw: No. EPA did not meet with us or let us provide input. EPA used a lot of modeling to make their decision, instead of on the ground facts.
    - Sullivan (R-OK):
- o Question to Sullivan (OIPA): What was your opinion of EPA enforcement after you met Regional Administrator Armendariz?
  - The attitude was one of fear for our group.
- o Are you concerned about the attitude at EPA?
  - Yes, the two biggest ingredients in our business, are capital and technology, with this kind of threat of overreach by EPA into our industry, capital can easily go somewhere else.
  - Waxman (D-CA):
- o Critics of EPA claim that the Armendariz comments provided a rare glimpse into Obama's EPA Administration.
  - To Mr. Mintz, who at EPA makes the decision about which enforcement actions to take?
    - Mintz: Decisions are made mostly by career employees, on a case-by-case basis.
  - To Mr. Mintz: Do Regional Administrators make decisions about who to take enforcement actions against?
    - Mintz: No, Career Enforcement officials and staff make those decisions.
  - Waxman then presented charts that document the number of enforcement actions at EPA in the Obama Administration compared to the Bush Administration. Mintz acknowledged these charts, and based on his analysis, and the civil penalty charts provided by Waxman, there has been no change in nationwide civil cases, nor enforcement cases in Region 6.

o Waxman to Mr. Short:

- The Regional Haze issue in New Mexico is not an enforcement issue, but an implementation issue, is this correct? [EPA disapproved New Mexico's SIP related to the installation of BART controls at the San Juan Generating Station. New Mexico would have allowed San Juan to install controls that cost \$70 million to address Regional Haze issues, while EPA's Federal Implementation Plan required Sam Juan to install controls that cost \$750 million.]

- Short: Yes, that is correct.

- EPA issued a letter recently inviting you to meet and help resolve the issue? Is that correct?

- Short: Yes, and we are hoping to resolve the issue.

o Waxman to Mr. Etsitty:

- Are you pleased with the EPA's efforts to help remediation with uranium mines on Navajo lands?

- Yes, we are.

- Burgess (R- TX)

o Did Dr. Armendariz do any good with his comments?

- Smitherman:

- No, these investigations should be based on science and facts, and it comes out that the evidence shows that the cause was naturally occurring. [he is referencing the Range Resources case].

- Shaw:

- We [TCEQ] are the enforcement authority. There was no need for EPA to step in.

- Gonzalez (D-TX)

o How can production [referring to oil and gas production] be up with such great [purported] EPA interference?

- Is the health and environment of Texas better because of EPA?

- Smitherman:

o A lot of the improvement is because of Natural Gas.

- Are we not better as a Nation because of the work of EPA over the past 40 years?

- Smitherman:

o When the EPA's regulations are based in science and fact ... not when EPA is issuing rules like the Cross State Air Rule, GHG NSPS Rule, and the MATS Rule.

- Shaw:

o Our ability to improve the environment in Texas has been diminished because of EPA's action over the past 3 years. EPA's message is that they are not interested in science.

o Gonzalez:

- You are not answering the question.
- Who should be the arbiter and decide which is the correct decision after both sides have presented their case?
- Smitherman: It should be handled in a collaborative way.
- Pompeo (R - KS):
  - o There is nothing hidden in this [EPA's] agenda:
    - Pompeo discussed how environmental organizations are raising the alarm on fossil fuel based exploration and extraction, and their slogans related to "Beyond Coal" and "Beyond Oil" and "Beyond Natural Gas." He then stated that this Administration is "beyond common sense, not beyond coal, oil, or natural gas."
    - o He discussed the General Duty clause within CAA § 112(r)(1):
      - Stationary Sources have a general duty to be safe.
      - He referenced how Region 6 has issued citations under the General Duty clause based on infrared cameras and Gas leaks, based on Section 112(r)(1).
      - o Shaw:
        - We use the infrared camera as a great tool in Texas.
        - The use of infrared cameras is not useful to measure or quantify emissions, just to know that emissions are being released.
        - Smitherman:
          - The use of infrared cameras to justify a citation is a slippery slope, enforcement should be based on belief and not science.
      - o Pompeo is drafting legislation that would require EPA to define specific clauses under CAA Section 112(r)(1).
  - Shimkus, (R-IL)
    - o Mr. Mintz:
      - Have you done "stuff" on EPA enforcement related to the cost of compliance before the rule gets promulgated, including court rulings, courts paying off the litigants, as the cost of doing business?
      - Mintz: No, those are regulatory processes.
    - o Shimkus:
      - The environmental groups are just going through the courts [to get their desired results].
      - What we know is occurring is that the environmental community is developing a higher standard, maybe you should look at this [suggesting a research topic for Professor Mintz].
      - o To Mr. Sullivan: he asked him questions about tax codes and tax breaks related to oil and gas exploration: Specifically, deductions related to:

- Drilling costs: Why is that normal business?

Sullivan: It is the cost of drilling a well, we are allowed to deduct that cost, just like another business, like an apartment owner.

- Manufacturing costs:

- Same tax break.

- % depletion allowance:

- Depreciation of a wasting asset.

o Shimkus stated that these purported "Sweetheart" tax laws are those tax breaks and laws that are applicable to all major businesses.

o To Short:

- You said that EPA Region 6 decided to not approve the portion of New Mexico's State Implementation Plan related to the San Juan Generating Station. You also said that EPA's Federal Implementation Plan for this portion, which will increase costs from \$70 million to over \$750 million, will result in visibility changes that are imperceptible to the human eye, is that correct?

- Short: Yes, the impact is huge, but it [the improvement in visibility between the \$75 million option and the \$750 million option] cannot be seen. In addition, we are also still waiting for the meeting with EPA.

- Olson (R-Texas):

o Armendariz was retained to act as a witness regarding environmental issues before he became Regional Administrator.

o Do you think that his previous role as a witness interfered with his ability to objectively act as the RA of Region 6?

- [Smitherman or Shaw], Yes, he seemed unable to transition from his activist role to a regulator who has to balance his responsibilities.

- Bilbray (R-CA)

o We should all agree that this is industrial profiling.

o To Mintz: Isn't it true that the CAA was sold to the public based on the promise to protect the public health and no other mechanism was available? Wasn't Public Health the backbone?

- Yes, that was and still is the objective and the root of the CAA.

- Bilbray: Clear Skies, was a departure away from basing regulation on public health. This is moving away from the original mechanism. Such is the case regarding (CA-1368)[a California Statute] in New Mexico. Is California going to be forced to change its GHG rules, for things that are occurring in New Mexico? Sets up a catch 22:

- Mintz: Yes, there are numerous countervailing arguments.

- Scalise (R-LA)

o This committee attempted to have the Region 6 Administrator testify. We are very disappointed. We need to find out if there was any intimidation by the Administration to prevent his testimony.

- o Need records of communication between Armendariz and Administration as to why he decided to not show up last minute.
- Rush (D-IL):
- o There is no basis for an inquiry between the White House and Mr. Armendariz. Let's use our resources in a more productive manner. This is insane to determine if the White House has interfered with the witness showing up.
- Whitefield (R-KY)
- o There is no question that he has poisoned the well regarding enforcement at EPA. We intend to have further discussions with him, but the committee as a whole would decide that.

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Date: 06/06/2012 04:12 PM  
Subject: Notes from June 6th HEC Hearing:

Caroline, below are my notes from today's hearing. I will refine, if you would like, and include the exact words used for the enforcement related questions and answers, based on the recording of the hearing. At this point, the recording is not available. It should be available soon...

[attachment "EPA Priorities and Process Hearing.6.6.12.docx" deleted by Keith Bartlett/DC/USEPA/US]

Keith

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"In the end, we will conserve only what we love, we will love only what we understand, and we will understand only what we are taught."